

"Is Denial of Justice Persecution ? The Case of Victims of Sexual Violence in Peru's 1980-2000 Internal Armed Conflict"

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Introduction

According to the 1951 UN Refugee Convention, there are three conditions a person should meet to be considered a refugee. One of them that this person is actually persecuted or have a reasonable fear of such persecution, for reasons of race, religion, nationality, membership to a particular social group or political opinions. The second one was to have crossed an internationally recognized border, in search of safety in another country. Finally, the third one was that this person could not obtain protection from his/her State of origin or residence, or had reasonable fear about asking for it.

The subject of persecution has received little attention when it comes to gender. The evident exclusion of gender as one of the reasons amounting to persecution could not hide the various forms a woman could be threatened, either in times of war or peace, due to the social construction of what a woman should be. Sexual violence within armed conflict is amongst the most serious threats a woman may face. This situation ultimately made UNHCR elaborate guidelines of international protection of women in the frame of the international refugee law (the Gender Guidelines hereinafter). In that sense, UNHCR stated that the aim of these guidelines is that asylum applications based on gender reasons should be recognized as such. [1]

The objective of this essay is to review, based on the case of the Peruvian women living in the peasant community of Manta, about denial of justice as a form of persecution. It is my intention to focus this essay on women living in peasant and native communities in Peru, because they were the main victims of sexual violence during the internal conflict, and the ones with the least opportunities to access to justice and reparations. At the local level, women belonging to the peasant and native communities must face the collective reluctance to address the subject and accept her claim. At the national level, women must face a judicial and administrative system that lacks a gender perspective, and whose officials act based on gender prejudices instead of principles of law.

The case of Manta-Huancavelica

Manta is a peasant community located in northern Huancavelica, the poorest and least developed department in Peru. Manta lacks of basic services of electricity, telephone and access to safe water. It also lacks of public transportation services due to its location in the middle of the mountains and the absence of roads, being very hard to reach them. Manta's population is rural and indigenous, and has soaring rates of illiteracy, malnutrition and poverty. Such rates are so high that, according to a 2004 UNICEF study, the numbers in children malnutrition in Huancavelica, are only comparable to those in Ethiopia and Afghanistan. [2]

However, Manta is mostly known in Peru for being one of the communities reported by the Peruvian Truth and Reconciliation Commission (CVR hereinafter), as the one who endured systematic sexual violence during the last 1980-2000 internal armed conflict. According to CVR's Final Report, sexual violence was one of the most widespread crimes during such conflict, and the main victims were women and young girls, coming generally from the countryside.

However, the most affected were those women like those of Manta : living in peasant communities in the mountains, mostly in conditions of poverty, speaking the Quechuan or any other native tongue and with little education. Prior to and after the conflict, these groups of women lived ignored by the State and civil society, with poor or null exercise of their fundamental rights, without access to basic services and, in most cases, legally inexistent as citizens because of their lack of identification documents, [3] whose expense is unaffordable for rural people. This is crucial considering that, in societies ruled by inequality, like the Peruvian one, violence has a deeper impact on people who are excluded according to race, origin, gender and economic means, amongst others. The more grounds of exclusion would mean more vulnerability. This situation of abandonment and practically legal inexistence made these women an easy target in the conflict.

In the specific case of Manta, what made the community even more vulnerable to the sexual crimes of both the military and the subversive groups was that it lodged a military base during fifteen years of the conflict which was meant to fight back the subversive movement, especially Shining Path and MRTA, and protect civil population. According to the CVR, the major responsible of the commission of sexual violence crimes were members of the State armed forces, being attributed to them the 83% of all sexual violence reported. [4] The consequence was a large number of women and girls subjected to several forms of sexual violence, such as rape, sexual slavery, enforced prostitution, forced nudity, forced unions and forced abortions, to mention a few. These crimes were committed systematically, during rallies on the houses of suspected subversives ; during the visits of women to the military base asking for the whereabouts and situation of their detained relatives ; or just when the military considered it appropriate to obtain relevant information or a confession.

Denial of Justice by the Community in Manta

The situation of women from Manta has not eased after the retirement of the military base in 1998, and the end of the conflict afterwards. Most of these women preferred to remain silent about the sexual violence suffered, for reasons that go from personal shame to fear to the reaction of their family or their new partners and husbands, who ignore this violent experience. There is also fear of any retaliation from the perpetrators, who abandoned the village threatening them to take action against them if they report the sexual violence to authorities.

On the other hand, the attitude of the community in general has been crucial in the treatment of the subject. After the conflict, when the CVR started its job toward the

clarification of causes, actors and consequences of the Peruvian conflict, Manta demanded participation in this process. In that regard, some of their inhabitants, including women, gave their testimony to the CVR, giving account of what happened in their town in this period.

However, once the Final Report of the CVR was released, part of community of Manta reacted angrily towards the section related to them. What caused strong discomfort among them was the conclusion that Manta was a leading case where sexual violence within armed conflict was systematic or widespread. Based on the testimonies from the very community, as well as other sources, the CVR identified several cases of sexual violence, which included rape, sexual slavery, enforced nudity and forced abortion.

Despite the identification of these cases, the community has denied collectively, in several public and private meetings, the existence of widespread sexual violence in their village. They argue that most of the sexual contact between women and the military were consented, and that even women and young girls looked for a relationship with them, so there was no coercion. Most of Manta men refuse to acknowledge the conclusions of the Final Report of CVR because they don't want to be known as the "village of the raped", and they scorn women who want justice, accusing them of lying in order to obtain money or benefits from the State.

The social pressure about the subject was so hard that, at one point, only the women displaced by the violence or those who had moved out from the community were able to tell their stories and look for justice. After the work of human rights NGO is Manta, and under individual and collective assessment, there are other women who had started to tell their stories as well. But there is still shame and fear to talk about this. Women from Manta, admit in private conversations the existence of this practice and explain how some of them were abused by the military while searching for a relative detained in the base, or while extorted to provide food, animals or information to them. They also accept that a large group of women, considering the power shown by the military amid this violent scenario, started relationships with them with the objective of securing protection for their family and themselves. However, when these women have to come public, either they keep silent or they support the denial by the men of the community. Consequently, they affirm that there were almost no cases of sexual violence and that whoever suffered from this act might be lying in order to get any type of compensation from the government.

There are a number of explanations for this reaction. From the psychological perspective, it is possible that Manta inhabitants go through a collective denial process that prevents peasants from bearing with the humiliation, pain and shame of having their women sexually assaulted during the fifteen years the military base was there. Actually, the reason why sexual violence within armed conflict is so commonly used as part of the military strategy throughout the history of war is because it is an effective way to undermine the moral of the group. According to Christine Chinkin, there is no other way to show the total defeat of a group than possessing their women, because such group has not been able to protect them. [5]

Secondly, most of the perpetrators of such crimes belonged to the Manta community or other peasant communities. Conscripts doing military services had mostly the same background as the victims : had a rural origin, lived in conditions of poverty and had a native tongue different than Spanish. These people, under a duty to obey the orders of their superiors without any discussion, were sent to emergency zones like Huancavelica to fight back the subversive groups, no matter what it takes. Since Peruvian criminal law focuses the sanction of sexual violence on the perpetrator rather than the superiors who ordered of planned such policy, most victims and their families did not denounce the crime because they perceived the perpetrators as one of them, and did not want to ruin their lives by sending them to jail. It is interesting to note the feelings of sympathy not to the victim but to the perpetrator, who is mostly understood under the circumstances and forgiven.

Thirdly, in Peru violence against women is a strongly socially tolerated attitude, especially in rural areas like Manta. In both formal and customary local justice, sexual violence and violence against women may be denounced, but is subject to conciliation between the victim and the aggressor. The social pressure on women and young girls often made them responsible of the violent act towards them, stating that they must have provoked the aggressor in any way to infuriate them. And, in the case of customary or local justice, which is very respected amongst peasants, the authority will act according to stereotypes and social mores rather than law. If this is the attitude in peasants communities towards violence, there is very little chance that women victims get some legal and social support from their communities. And, considering indigenous and peasant communities, communitarian values and attitudes are of great importance, differently to urban areas where individual values rule in anyone's life.

The situation of women in Manta-Huancavelica demonstrates what a woman, belonging to peasant or indigenous communities must afford when it takes to sexual violence. It demonstrates that sexual violence is not exclusive of a context of armed conflict. On the contrary, it is present prior to, during and after such conflict, in a sequence of violence that nurtures itself and reaches the next generations. Previous patterns of marginalization and exclusion of women from basic services and State protection creates tolerance towards violence against them. Consequently, sexual violence within armed conflict is not an isolated act or strategy, but only the exacerbation of these patterns.

Regarding these crimes, if impunity rules during post-conflict periods, this behaviour will repeat in the future. In that sense, women's life becomes a succession of different types of violence that will affect her physical and mental health. Even worse, they will get used to the idea of being second-class citizens in society and regular subjects of sexual violence, dismissing any possibility of justice or redress. This attitude will have an impact on their children and grandchildren, who might now find support in them in case of suffering from sexual violence themselves and thus repeat their omission.

Denial of Justice by the State

The Final Report of CVR was meant to be the starting point of a process of legal redress and reparation for all victims of violations of human rights, including those of sexual violence within the internal armed conflict in Peru. It outlined the bases of an Integral Plan of Reparations (PIR hereinafter) that had to be passed by Peruvian Congress, and submitted the cases of violations of human rights to public prosecution in order to be investigated and judged. The case of Manta was one of these cases submitted to public prosecution.

However, after three years of the Final Report, little has been done regarding victims of sexual violence. Regarding justice, the main obstacle for these women is the absence of a legal type of sexual violence as a crime against humanity in the Peruvian Criminal Code. Without the criminalisation of this conduct, sexual violence should be judged only as rape, in a basic and not systematic way, thus with less punishment and subjected to statutes of limitation. In the case of Manta, most of these crimes are already subject to prescription, provided that they were only known from 2003, that is, from ten to twenty years after the crimes were committed. In this scenario, international customary law could be used to fill the legal void in this matter and allow justice for the victims. However, judges and prosecutors are still reluctant to apply it, arguing that the principle of legality is at stake. That is the reason why, after these years, no judicial process has been started in the Manta case, despite all the evidence submitted.

As for the reparations process, it had its steps forth and back regarding sexual violence within the internal armed conflict. Last July 2005 the Peruvian Congress passed the Law N° 28592, implementing the Integral Plan of Reparations (PIR hereinafter) for all the victims of the 1980-2000 Peruvian internal armed conflict. However, in the case of women, there are three problems contained in this law. First of all, only women victims of rape will be entitled to reparations, putting aside other forms of sexual violence found and documented in the Final Report of CVR.

Secondly, the notion of “victim” expressly excludes those women who belonged to the subversive movements. That means that all women who endured any type of sexual violence because they were linked to Shining Path or MRTA are denied to obtain reparations for these acts. This is critical, provided that sexual violence was part of the strategy of both the military and the subversives towards women. While the former used it as a form of humiliation and torture, the latter used it as a form to control women as combatants, housekeepers and sex partners of their leaders. That is the reason why the most common acts of sexual violence amongst the military were rape, forced nudity and forced abortions, whereas forced unions and sexual slavery were more common amongst the subversive movements. The restriction in the notion of victim means that such crimes do not entitle women to any type of reparations.

Thirdly, all the victims must sign up in the Victims Registry created for such effect, in order to participate from the several forms of reparations established by law. However, in the case of victims of sexual violence, there is no further information in the law and its statutes about how their registration will take place with a gender perspective. There is no

word on taking up their testimonies with a sensitive way, and how confidentiality is going to be ensured, amongst others.

On the other hand, the Registry has been thought for an urban victim, with requisites that most rural victims cannot fulfil, especially women. Amongst these documents we have identity documents and birth certificates, which are uncommon for rural women (mostly men have it) and a specific recount of the facts, when rural people have different ways to recount facts, not following the Gregorian calendar. In that sense, if no gender and intercultural perspective is applied to understand this reality, the Registry paradoxically could end up marginalizing, instead of including, the victims coming from the most excluded groups of society.

Conclusion : Is Denial of Justice Persecution ?

Through the case of Manta we had explored the situation of women victims of sexual violence during the Peruvian internal armed conflict. They had suffered from sexual violence that has left a mark on their bodies and minds, and keep enduring not only with the sequels of such acts, but with the indifference and inefficiency from the State and the control of the community. Women get victimized once and again, after the sexual violence, when they are accused of opportunists instead of being recognized as victims ; when they are not believed by authorities ; when they see helplessly that State cannot apply law because it doesn't exist ; and that there is a good chance that they are left out with no redress at all.

According to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, interpreting article 33 of 1951 Convention, any threat to life or freedom for reasons of race, religion, nationality, political opinion or membership to a particular social group would amount to persecution. Other serious violations of human rights would constitute persecution, too. [6] Sexual violence within an internal armed conflict is a serious violation of human rights, and it was committed to women due to a political opinion attributed to them (that is, they or their families were supporting or had any link with the subversive movements), or the social group they belong (rural, poor, Quechuan-speaking peasants, which were once considered the base of subversive support). Preventing these women, in one way or another, from obtaining justice is also a violation of human rights, and it is based not only on political opinions or membership to a particular social group, like the original act of sexual violence, but to gender considerations as well. That is because their stories are dismissed because of men's hurt pride and the general stereotype that women lie and use their bodies and sex to gain advantages. In my opinion, this situation, under the light of UNHCR Gender Guidelines and Handbook of Procedures, would constitute persecution.

[1] See UNHCR. Guidelines on International Protection. Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01, para. 1.

[2] INEI and UNICEF (2004). El Estado de la Niñez en el Perú. Lima : UNICEF. In <http://www.educared.edu.pe/modulo/u...>

[3] Historically women from the countryside are the biggest group of illiterates in the country. Their lack of identification documents, due to their costs, made them ineligible for general public services. Amongst those services there are health ; justice ; hiring ; voting in elections or being elected ; register a child ; or change civil status. A study about this situation is contained in VELAZQUEZ, Tesania (2004). Vivencias Diferentes. La Indocumentación entre las Mujeres Rurales del Perú. Lima : DEMUS, OXFAM and DFID.

[4] TRUTH AND RECONCILIATION COMMISSION OF PERU (2003). Final Report. Lima : CVR, t. VI, p. 287. According to the CVR, 83% of cases of sexual violence within the internal armed conflict were imputable to the State forces, while only 11% were imputable to the subversive groups.

[5] CHINKIN, Christine. "Rape and Sexual Abuse of Women in International Law" European Journal of International Law. Vol. 5, N° 3, 1994, p.328.

[6] UNHCR. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1, January 1992, para. 51.